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असाधारण

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, 25th January, 2005/Magha 5, 1926 (Saka)

THE CENTRAL EXCISE LAWS (AMENDMENT AND VALIDATION) ORDINANCE, 2005

No. 1 OF 2005

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Central Excise Act, 1944, rules made thereunder, certain notifications relating to exemption from duties of excise during a past period and to validate the actions taken under such notifications during such period.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Central Excise Laws (Amendment and Validation) Ordinance, 2005.

(2) It shall come into force at once.

Short title
and
commence-
ment.

Amendment of section 37 of Act 1 of 1944.

2. For the period commencing on and from the 1st day of March, 1983 and ending with the 28th day of February, 1987, sub-section (1) of section 37 of the Central Excise Act, 1944 shall stand substituted and shall be deemed to have effect as if for the said sub-section, the following sub-section had been so substituted, namely:-

“(1) The Central Government may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.”

Amendment of rule 8 of the Central Excise Rules, 1944.

3. For the period commencing on and from the 1st day of March, 1983 and ending with the 28th day of February, 1987, after sub-rule (1) of rule 8 of the Central Excise Rules, 1944, as it stood before its omission by the Central Excise (Third Amendment) Rules, 1988, the following sub-rule (1A) shall stand inserted and shall be deemed to have effect as if the said sub-rule had been so inserted, namely:-

“(1A) The power to issue notification as conferred by sub-rule (1) shall include the power to give retrospective effect to such notification.”

Amendment of notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

4. (1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue):-

(i) No. G. S. R. 120 (E), dated the 1st March, 1983 as superseded by notification No G.S.R. 607 (E), dated 4th August, 1983 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No.G.S.R 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

58 of 1957.

(ii) No. G.S.R. 298 (E), dated 25th March, 1985 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G.S.R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-clause (4) of clause 47 of the Finance Bill, 1985 which clause had force of law by virtue of the declaration made in the said Bill under the Provisional Collection of Taxes Act, 1931;

58 of 1957.

(iii) No. G.S.R. 431 (E), dated 24th May, 1985, issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G.S.R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-section (4) of section 47 of the Finance Act, 1985; and

16 of 1931

(iv) No. G. S. R. 701 (E), dated the 2nd September, 1985 as amended by notification No. G.S.R. 747 (E) dated 20th September, 1985 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G.S.R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957,

58 of 1957.
32 of 1985.

by the Central Government shall stand amended and shall be deemed to have been so amended retrospectively, in the manner as specified in column (3) of the Schedule on and from the corresponding dates as specified in column (4) of the said Schedule till the date of those notifications were superseded or rescinded, as the case may be.

58 of 1957.

(2) Notwithstanding anything contained in section 11A of the Central Excise Act, 1944, recovery shall be made of all amounts of duty or interest or other charges which have not been collected or, as the case may be, which have been refunded but which would have been

1 of 1944.

collected or, as the case may be, which would have not been refunded if the provisions of this section had been in force at all material times, within a period of thirty days from the date of commencement of this Ordinance, and in the event of non-payment of duty or interest or other charges so recoverable, interest at the rate of fifteen per cent. per annum shall be payable from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the notifications referred to in sub-section (1) had not been amended retrospectively by that sub-section.

5. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

- (a) all things done or actions taken by the Central Government under the notifications referred to in clauses (i) to (iv) of sub-section (1) of section 4 as they stood before the commencement of this Ordinance shall be deemed to be and to have always been done or taken in accordance with the provisions of the said notifications;
- (b) no suit or other proceeding shall be instituted, maintained or continued in any court, tribunal or other authority for the refund of any duty levied under the notifications referred to in clause (a);
- (c) no court shall enforce any decree or order directing the refund of any such duties levied under the notifications referred to in clause (a);
- (d) no claim or challenge shall be made in, or entertained by, any court, tribunal or other authority on the ground only that the Central Government did not have, at the material times, the power to amend retrospectively the notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

Validation of
notifications
issued under
sub-rule (1)
of rule 8 of
the Central
Excise
Rules, 1944.

Application
section 4.

of

6. For the removal of doubts, it is hereby declared that the amendment made to sub-section (1) of section 37 of the Central Excise Act, 1944 by section 2 and the amendment made to rule 8 of the Central Excise Rules, 1944 by section 3 shall be in addition to, and not in derogation of, the provisions of section 4.

1 of 1944

THE SCHEDULE

(See section 4)

| S. No. | Notification No. and date | Amendment | Date of effect of amendment |
|--------|--|---|--|
| (1) | (2) | (3) | (4) |
| 1. | G. S. R. 120 (E), dated the 1 st March, 1983 (36/83-Central Excise dated 1 st March, 1983) | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail: Provided that- (a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price; (b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.' | 31 st day of March, 1983 to 3 rd day of August, 1983 (both days inclusive) |
| 2. | G.S.R. 607 (E), dated the 4th August, 1983 [211/1983-Central Excise, dated the 4th August, 1983] | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail: Provided that- (a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price; (b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.' | 4 th day of August, 1983 to 24 th day of March, 1985 (both days inclusive) |
| 3. | G.S.R. 298 (E), dated the 25 th March, 1985 [100/1985-Central Excise, dated the 25 th March, 1985] | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail: | 25 th day of March 1985 to 23 rd day of May, 1985 (both days inclusive) |

| S. No. | Notification No. and date | Amendment | Date of effect of amendment |
|--------|------------------------------|-----------|--------------------------------|
| (1) | (2) | (3) | (4) |

Provided that-

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'

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| 4. | G.S.R.431 (E), dated the 24th May, 1985 [134/1985- Central Excise, dated the 24 th May, 1985] | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail: | 24 th day of May, 1985 to 1 st day of September, 1985 (both days inclusive) |
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Provided that-

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'

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| 5. | G.S.R. 701 (E), dated the 2 nd September, 1985. [201/1985-Central Excise, dated the 2 nd September, 1985] | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail: | 2 nd day of September, 1985 to 19 th day of September, 1985 (both days inclusive) |
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Provided that-

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such

| S. No. | Notification No. and date | Amendment | Date of effect of amendment |
|--------|------------------------------|-----------|--------------------------------|
| (1) | (2) | (3) | (4) |

sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.

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| 6. | G.S.R. 747 (E), dated the 20 th September, 1985. [210/1985-Central Excise, dated the 20 th September, 1985] | In the said notification, for clause (4) as substituted by item (ii), the following clause shall be substituted, namely:- '(4) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail: | 20 th day of September, 1985 to 28 th day of February, 1987 (both days inclusive) |
|----|---|---|--|

Provided that-

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.

A.P.J. ABDUL KALAM,
President.

Z. S. NEGI,
Additional Secretary to the Govt. of India.